(1)

Supreme Court, U.S.
FILED

041654 MAY 6 - 2005

OFFICE OF THE CLERK

No.

In the
SUPREME COURT OF THE UNITED STATES

Joseph A. Mayercheck,
Petitioner

vs.

Judge Rita Hathaway
Barbara Irwin Mayercheck
Vince Orgera
Paul Miller,Esq.
Ralph Conrad, Master
Judge Richard McCormick
Judge Daniel Ackerman
Pennsylvania Superior Court
Judge Christopher Feliciani,
Respondants

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Dr. Joseph A. Mayercheck, pro se
10 Thomas Jefferson Ct.
Irwin, Pa. 15642
724-863-1627

QUESTIONS PRESENTED FOR REVIEW

A. Has absolute judicial immunity completely eroded the public's confidence in our Court system? Does judicial immunity (legal apartheid) defy this Court's ruling in Brown vs. Board of Education, stating that, "Separate but Equal", will never exist again in this country? Answers to both-- yes

B. Does the Federal Court Improvement Act of 1996 defy the First Amendment thus making it illegal? Answer-- yes

C. When the Pennsylvania Superior Court rejects Appeals involving irreparable harm stating they are interlocutory, does that contradict this Court's ruling in Cohen vs. Beneficial Industrial Loan Corp.? Answer -- yes

D. If the Pennsylvania State Courts purposefully ignore case law and circumstances in Cohen, does this deny timely DUE PROCESS thus invoking a Younger abstention? Answer -- yes

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Plessy v Ferguson, 1892 ..... pgs 9,12

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Stump v Sparkman, 435 U.S. 362(1978).. pg 10

Pennsylvania Constitution:
Article V, section 18(a)(8) ..... pg 11

Federal Court Improvement Act-1996 .... pg 12,13,16

Pullian v Allen, 466 U.S. 522(1984) .....pg 12,13

Younger v Harris, 401 U.S. 37(1971) ... pg 14,15,16

REPORTS AND OPINIONS BY THE COURT BELOW

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1. Order by the United States Court of Appeals for the Third Circuit affirming the Order of the District Court to Dismiss Plaintiff's Complaint dated January 14, 2005.
Appendix A

2. Order of the United States District Court for the Western District of Pennsylvania Dismissing Plaintiff's Complaint dated March 10, 2004.
Appendix B

3. Order of the United States Court of Appeals for the Third Circuit denying a timely filed petition for Rehearing dated February 16, 2005.
Appendix C

JURISDICTION

The United States Court Of Appeals for the Third Circuit issued an Order in this matter and was filed January 14, 2005.(Appendix A). A timely petition for Rehearing was denied on February 16, 2005.(Appendix C). This Court's jurisdiction is invoked under Title 28, U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitutional Amendments-First, Fifth, Seventh, Eighth, Eleventh and Fourteenth

Title 42- Section 1983, 1985, 1986 and 1988

STATEMENT OF THE CASE

This Petitioner and his wife, Barbara Mayercheck, were married in November, 1985. Both parties signed a pre-nuptial statement of Assets & Liabilities. Wife committed acts of adultery and 15 years later, husband and wife signed a post-nuptial Agreement that was constructed by a lawyer, notarized and filed with the Court. Even though husband and wife continued to live together, they were in the process of executing the divorce contract that paralled the Pennsylvania landmark post-nuptial case of Vaccarello, Pa. Supreme Ct., no. 0029 W.D. Appeal DOCKET 1999. The last of several divorce filings was made in March, 2002 as 546 of 2002D, Westmoreland County, Pennsylvania.

Petitioner had major back surgery at the same time of the divorce filing and for financial reasons represented himself. Wife went to live with her current lover, Respondent Vince Orgera and left the Petitioner with over $750,000.00 in marital debt. From The very beginning, wife and her attorney, Respondent Paul Miller, attempted to take legal advantage of Petitioners self-representation. At one point in 2002, Petitioner filed a pleading with Respondent Judge Rita Hathaway asking for Relief to remove wife from his office as she was stealing, slandering and embezzling. Wife's attorney did not show and

Judge Rita Hathaway granted a Temporary Restraining Order. This occurred at 4:30p.m. on a Friday; Court immediately closed. Petitioner took the TRO to wife's attorney's office and slide it under the door as his office was now closed also.

On the following Monday at 8:00a.m., wife came to Petitioner's home "singing" that his TRO had been rescinded. How did wife's attorney contact Judge Rita Hathaway over the weekend and still have wife with the rescinded Order by Monday morning before the Court even opened? There was no legal reason to reverse the TRO as wife was not drawing a salary in husband's office so her livelihood was not harmed. Petitioner was outraged at the obvious ex-parte meeting between Judge Rita Hathaway, wife and her attorney. Petitioner immediately filed a Complaint with the Administrative Judge, Respondent Richard McCormick. Nothing was done to Judge Rita Hathaway nor was the TRO restored so Petitioner filed a Complaint with the Judicial Conduct Board.

During this same time period, Petitioner received calls informing him that Judge Rita Hathaway took "bribes" and gave the name of "Rick Wojic" and the amount of $10,000.00. Petitioner was not sure if the caller was just being informative or soliciting. Petitioner reported the incident to the Federal Bureau of Investigation.

It became obvious that no one was going to discipline Judge Rita Hathaway and this inaction

by all agencies only empowered Judge Rita Hathaway to now persecute the Petitioner in all phases of the divorce. Every decision by the Respondents went against the Petitioner and violated Pennsylvania case law as well as his Constitutional Rights.

When Petitioner was in the hospital having back surgery, wife went through the marital residence and office clearing documents that would hurt her in the divorce. Petitioner was more concerned with the rehabilitation period rather than wife's divorce and paid little attention to the Court proceedings. Eleven months after the divorce was filed, Petitioner was able to find copies of the parties pre and post-nuptial Agreements. On February 14, 2003, Petitioner filed a pleading referencing the post-nuptial contract and asked the Court to finalize the divorce. Judge Rita Hathaway ignored the pleading and the seriousness of the divorce contract.

Petitioner was forced to go through all the Court proceedings like spousal support that the divorce contract outlined and stated neither party was to ask, or get support. Petitioner decided that he must get legal representation even at the financial expense of paying all the marital debt, all the divorce expenses and now counsel.

Petitioner's counsel found the post-nuptial Agreement attached to wife's previous divorce filling and it was filed with the prothnotary; he

filed to have the divorce contract enforced. In the first of two hearings, Judge Rita Hathaway was presented with the same situation that Petitioner placed in front of her eight months earlier but Petitioner now had counsel. Judge Rita Hathaway looked straight at wife and her counsel and said, " unless there is a document dismissing this Agreement, it probably is enforceable".

One week later, wife produced a fraudulent document showing a forged signature of the Petitioner dismissing the divorce contract. The divorce contract signed by both parties was notarized and filed with the Court and stated the only way it could be changed was to execute a document in the same formality and manner of execution. Wife's fraudulent document was neither notarized nor filed with the Court. Wife gave elusive reasons why her dismissal document was not notarized and stated she gave the original to the Prothonotary but they lost it. Judge Rita Hathaway made a ruling that the post-nuptial Agreement was not enforceable and that wife's testimony was credible!

When Judge Rita Hathaway made her Memorandum of Court concerning her dismissal of the divorce contract, she violated every aspect of Pennsylvania's Vaccarello Supreme Court case involving post-nuptial Agreements. While Judge Hathaway ignored many parallel aspects, the most serious was her personal interpretation of what she thought the parties intended.

Vaccarello states, " when construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties understanding. The Court must construe the contract only as written and may not modify the plain meaning of the words under guise of interpretation. When the terms of a written contract are clear, this Court will not re-write it to give it a construction in conflict with the accepted and plain meaning of the language used".

Now, all of the costly litigation, both State and Federal Courts, for the past few years has involved items that were resolved by clear and unambiguous language in the parties post-nuptial divorce Agreement.

Petitioner's counsel Appealed to the Pennsylvania Superior Court. First, this State Appellate Court rejected the Appeal, then accepted and told counsel of a Briefing schedule and then rejected again stating the Lower Court Order was Interlocutory. This Appellate Court ignored the irreparable harm being done to the Petitioner and ignored this Court's ruling in Cohen vs. Beneficial Industrial Loan Corp. 337 U.S. 541,69 S. Ct. 1221, 93 L.ED, 1528 (1949) where postponement of Appeal only of final judgments might result in irreparable harm or loss of the right asserted.

Petitioner not only had his Constitutional Rights violated by the Respondents but was

experiencing irreparable harm. He was being denied timely DUE PROCESS that could only be insured by the Federal Courts. In Monroe vs. Pape, 365 U.S. 167 (1961), that Court stated, " the Federal remedy is supplemental to the State remedy, and the latter need not first be sought and refused before the Federal one invoked. The requirement that a plaintiff exhaust all State Court remedies does not always apply, when considering Federal abstention".

On February 27, 2004, Petitioner filed the Federal lawsuit against the Respondents in this case in the United States District Court for the Western District of Pennsylvania, Civil Action No. 04-0295. The U.S. District Court Dismissed the case on March 10, 2004. An Appeal was filed with the Third Circuit as Appellate Docket No. 04-1839. The Third Circuit dismissed the Appeal on January 14, 2005. A petition for Rehearing was denied on February 16, 2005.

REASONS FOR GRANTING THE PETITION

A. Absolute judicial immunity

How many times has the phrase, " absolute power corrupts absolutely", been used describing the legal system and Judges. Most Americans now view lawyers, Judges and all State and Federal Courts with a serious lack of confidence and respect. We have watched clients shoot around trees at their lawyer and acts of violence committed on Judges and their families. How has all of this come about? It starts with Judges abusing their power and then laughing in the face of society as they are not held accountable as per the Eleventh Amendment of the U.S. Constitution. This double standard must be reviewed by this Court.

In 1890, Homer Plessy (1/10 genetic black American) sat in a "white only" railroad car and was jailed. In Plessy vs. Ferguson, 1892, he argued that the Separate Car Act violated the 13th and 14th Amendments of the U.S. Constitution. Plessy did not win his case because it was determined there could be separate coaches that gave equal treatment.

That flawed decision stood for 62 years until Brown vs. Board of education, 1954. In yet another racial discrimination case, that High Court ruled and stated, "separate but equal" would no longer be the law of the land. While

that edict still applies to most citizens, Judges are not included, and held accountable, by absolute immunity. The Eleventh Amendment states that individuals can sue State authorities in Federal Court for depriving them of Constitutional Rights.

Absolute judicial immunity is nothing more than LEGAL APARTHEID; the policy of strict legal separation and Discrimination against American private citizens by the judiciary. We deplored this practice in South Africa but the judiciary opens its arms to it, supports it and strongly defends it.

The "other" defense given for absolute judicial immunity was set in Stump vs. Sparkman, 435 U.S. 362(1978), at 1111. That Court stated that, " Judges fidelity to independent and fearless decision making is of the utmost importance, and is all the more reason that a Judge should be able to act without fear of a lawsuit". Over twenty-seven years have passed and that policy for immunity no longer exists.

Doctors must make fearless decisions of utmost importance but still have the legal profession making them fear a lawsuit in their offices and hospitals. And yet, doctors go on to serve the public well. Can Judges today not perform just as well under those same circumstances?

When Petitioner filed a formal Complaint against Judge Rita Hathaway with the Judicial

Conduct Board, the first letter from this Board stated the investigation must be confidential as per the Pennsylvania Constitution, Article V. Section 18(a)(8). The cloak of secrecy continued with the Third Circuit with its initial decision saying at the top of its Order, " unreported-not precedential".

In contrast, if a doctor is sued, the entire world knows and the decision is placed in the National Data Bank. How are private citizens to be made aware of "bad" judges and their decisions in order to be an informed voter; if they are elected and not appointed?

Every third commercial on television is a lawyer asking the viewer if they've been injured by some doctor or company. They will get money for you without any money up front. Why is there never a commercial asking if a Judge has harmed us?

Should Judges be treated any differently or maintain, "separate but equal"? The public strongly feels that Judges are above the law and want change. The president of the United States feels judges are out of control. House Majority leader, Tom Delay, stated we must pull the reins in on Judges. This very Court's Justice, Clarence Thomas is concerned. When he appeared in front of the House Appropriations Committee for the Supreme Court's budget, the topic of security came up. Justice Thomas felt security was satisfactory but said, " I believe we are on

borrowed time". To this viewer, it simply meant that with there being so much dissatisfaction with Judges and an irritable society, that an act of violence on the Supreme Court was coming.

How have we come to this very low point with respect for Judges and the legal system. Absolute power corrupts absolutely. Judges fear nothing as there are no consequences. This High Court has the opportunity to leave a legacy of restoring integrity and public confidence in the judiciary. Unless absolute judicial immunity is reversed in some way, it's 1890 for all private citizens and we're still on that "separate but equal" train with Plessy.

B. Federal Court Improvement Act of 1996

Besides the Eleventh Amendment, there have been prior cases that stated Judges could be held accountable; Stump and Pullian vs. Allen, 466 U.S. 522 (1984). However, to solidify and reinforce judicial immunity (and reverse cases like the above), Congress passed the Federal Courts Improvement Act of 1996. Lawyers and Judges working together to shed responsibility.

Doesn't the First Amendment state that Congress shall make NO law prohibiting people the right to petition the government for a redress of grievances and relief from unfair treatment. The language obviously means more than just write a petition but the FCIA of 1996 is now used as a defense for immunity. Ironically, counsel for

the judicial Respondents, arrogantly stated in the District Court that the FCIA of 1996 was solely intended to correct the "logical flaw" of Pullian vs. Allen, and merely return the law related to judicial immunity to the same place it had been before this Court's decision in Pullian. This type of arrogance is pervasive throughout the legal system. However, it means that the Supreme Court flawed and so too did the makers of the First and Eleventh Amendment.

The Federal Courts Improvement Act of 1996 is clearly in violation of the these Amendments and must be declared illegal.

C. Pennsylvania State Courts ignoring Cohen vs. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L. Ed, 1528 (1949)

Petitioner's wife made every attempt to find and remove all pre and post-nuptial documents that could harm her in the divorce. Judge Rita Hathaway attempted, by judicial interpretation, to sweep these divorce contracts away stating they should have been brought up sooner. Time does not diminish or vacate contracts unless stated in the contract; the Mayercheck's divorce contract had no such statement.

The divorce contract spelled out, in clear and unambiguous language, the exact disposition of property and normal items of divorce. To have Judge Rita Hathaway dismiss it was almost

expected with her long pattern of Constitutional violations. But when the Pennsylvania Superior Court rejected, accepted and finally rejected was a violation of Cohen where that Court carved out exceptions to Appeals only of final judgments where postponement of Appeal until final judgment "might" result in irreparable harm or loss of the right asserted.

Petitioner has already (and not 'might') experienced irreparable harm. The incomprehensible loss of money, time and health. This does not account for the years of Appeals still ahead to settle the divorce.

Had the Pennsylvania Superior Court accepted the case, and properly overturned the Lower Court, this case would have been over years ago. If this Court does not send a message to all State Courts that Cohen must be followed in circumstances such as this present case, irreparable harm and loss of Rights will continue.

D. Younger abstention (Younger vs. Harris, 401, U.S. 37-1971).

Petitioner had major back surgery the same time his wife filed for divorce; she wanted to live with her lover, Vince Orgera. Petitioner was not to return to work for six months and do rehabilitative therapy; he returned in two weeks wearing an acrylic body cast to lean over patients. Petitioner is a 60 year old dentist that has no retirement account and no disability

insurance. Wife had removed all divorce documents from the marital home; she had signed that neither party would get support or legal fees among other items.

Petitioner retrieved copies of the parties pre and post-nuptial divorce Agreement and filed a pleading with Judge Rita Hathaway in February, 2003; the pleading was ignored. Since this time mentioned, all litigation could have been avoided if Judge Rita Hathaway only followed the terms of Vaccarello, where clear and unambiguous language was written in the Mayercheck divorce contract.

The Pennsylvania Superior Court rejected Petitioner's Appeal and ignored the irreparable damage referred to in Cohen.

Without the divorce contract, Petitioner has been Ordered/forced to pay all the marital debt($750,000.), pay an illegal support order fabricated by Respondent, Master Ralph Conrad, be held in Contempt with an ongoing threat of incarceration by Respondent, Judge Christopher Feliciani and now faces years of Appellate review as well as the thousands of dollars expense that goes with it.

When the Federal Courts abstain, the first line of defense is to say that the Federal Courts do not want to interfere with an "ongoing" State Court procedure and invoke the Younger doctrine. In this present case, the only reason the case is "ongoing", is because the State

Courts have been derelict in their duties and responsibilities to render justice in an expedited manner. Even in the States protracted attempt at rendering more unnecessary litigation, they have seriously violated Petitioner's Constitutional Rights and especially not rendering TIMELY DUE PROCESS. The key word is timely. Therefore, the Younger abstention applies as well as the ruling from Monroe vs. Pape.

In the medical profession, when a situation is wrongly created by the doctor and not the illness of the patient, it is called, "iatrogenic", meaning doctor caused. What is the word for when the Courts cause persecuting, unnecessary litigation? It can only be the opposite of absolute judicial immunity, abstention, legality of the FCIA of 1996 and Constitutional Rights as well as Title 42, sections 1983, 1985, 1986 and 1988.

When the Trade Tower bombings occurred on September 11, President Bush said we will not only go after the terrorists but those countries that harbor and protect them. Those that work inside our legal system, and do nothing to correct the incompetence and corruption, are harboring and supporting legal terrorism.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari to the United States Third Circuit of Appeals should be granted.

Joseph A. Mayercheck

Respectfully submitted,

May 6, 2005
Date

Dr. Joseph A. Mayercheck
Pro se
10 Thomas Jefferson Ct.
Irwin, Pa. 15642
724-863-1627

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
No. 04-1839

Joseph A. Mayercheck
Appellant

V

JUDGE RITA HATHAWAY; BARBARA IRWIN MAYERCHECK; VINCE ORGERA; PAUL MILLER,ESQ.; RALPH CONRAD, Master; JUDGE RICHARD McCORMICK; JUDGE DANIAL ACKERMAN; PENNSYLVANIA SUPERIOR COURT; JUDGE CHRISTOPHER FELICIANI

On Appeal From the United States District Court
For the Western District of Pennsylvania
(D.C. Civil No. 04-cv-00295)
District Judge: Honorable Thomas M. Hardiman

Submitted Under Third circuit LAR 34.1(a)
December 28, 2004

Before: RENDELL, AMBRO and FUENTES, Circuit Judges

JUDGMENT

Appendix A
18.

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was submitted to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED and **ADJUDGED** by this court that the order of the District Court entered March 11, 2004, be and the same is hereby affirmed. Costs taxed against the Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:
/s Marcia M. Waldron

Marcia M. Waldron, Clerk

DATED: January 14, 2005

Appendix A
19.

UNREPORTED-NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 04-1839

Joseph A. Mayercheck
Appellant
V.

JUDGE RITA HATHAWAY; BARBARA IRWIN MAYERCHECK; VINCE ORGERA;PAUL MILLER; RALPH CONRAD; JUDGE RICHARD McCORMICK; JUDGE DANIAL ACKERMAN; PENNSYLVANIA SUPERIOR COURT; JUDGE CHRISTOPHER FELICIANI

On Appeal From The United States District Court
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(D.C. Civil No. 04-cv-00295)
District Judge: Honorable Thomas M. Hardiman

Submitted Under Third Circuit LAR 34.1(a)
December 28, 2004

Before:RENDELL, AMBRO and FUENTES, Circuit Judges.

(filed January 14, 2005)

OPINION OF THE COURT

PER CURIAM

Appendix A
20.

Appellant, Joseph A. Mayercheck, appeals the District Court's order granting the motion to dismiss his complaint and denying his " Motion for Emergency Restraining Order." For the reasons that follow, we will affirm.

Mayercheck's complaint, which he later amended, sets forth numerous claims arising out of his state court divorce proceedings. Named as defendants are the Superior Court of Pennsylvania, four judges of the court of common Pleas of Westmoreland County, and a divorce master(the judicial defendants), as well as Mayer check's wife, her divorce attorney, and the individual with whom she allegedly had an "adulterous affair." As relief, Mayercheck sought orders directing that his case be "heard in a timely fashion by the Appellate Courts in Pennsylvania," that a support order be stayed until it can be "revisited," and that the state courts be held in contempt if they "attempt to retaliate." Further, in his "Motion for Emergency Restraining Order," Mayercheck sought to ensure that the state family court did not hold him in contempt and have the support order immediately reviewed. Mayercheck also sought damages.

The judicial defendants filed a motion to dismiss and an opposition to the motion for injunctive relief. At a hearing, the District Court granted the motion to dismiss, denied the "motion for emergency restraining order" (which the District Court treated as a motion for a preliminary injunction), and dismissed the complaint with prejudice. In particular, the District Court held that it lacked jurisdiction pursuant to, inter alia, the Rooker-Feldman doctrine.[1] Under the Rooker-Feldman doctrine,

---

[1] The District Court also held that Younger abstention was warranted, see Younger v. Harris, 401 U.S.37 (1971), and the judicial defendants were entitled to immunity.

lower federal courts cannot entertain constitutional claims that are inextricably intertwined with state adjudication. See FOCUS V.Allegheny County Court of Common Pleas, 75 F. 3d 834, 840(3rd Cir.1996).
A federal claim is inextricably intertwined with a prior state adjudication if:

> The federal claim succeeds only to the extent that the state court wrongly decided the issues before It. In other words, Rooker-Feldman precludes a federal action if relief requested in the federal Action would effectively reverse the state decision Or void its ruling.... If the relief requested in the Federal action requires determining that the state Court's decision is wrong or would void the state Court's ruling, then the issues are inextricably Intertwined and the district court has no subject Matter jurisdiction to hear the suit.

FOCUS, 75 F.3d at 840(quoting Charchenko v City of Stillwater, 47 F. 3d 981, 983(8th Cir. 1995). A District Court does not have jurisdiction over "challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional." District of Columbia of Appeals v. Feldman, 460 U.S. 462, 486(1983)

Upon careful review of the record, we agree with the district Court that Mayercheck's claims are barred by the Rooker-Feldman doctrine. Mayercheck's complaint essentially challenges the state court's rulings in the divorce proceedings. In order to grant him the requested monetary and injunctive relief, the District Court would effectively have to determine that the state courts' decisions were wrong and/or void the state courts' ruling. For the above reasons, as well as those articulated by the District Court, we will affirm the judgment of the District Court.

Appendix A
22.

Certified as a true copy and issued in lieu
Of a formal mandate on ___Feb 24,2005

Teste: /s Marcia M. Waldron
Clerk, U.S. Court of Appeals
For the Third Circuit

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Joseph A. Mayercheck
Plaintiff

vs.

Civil Action No. 04 -295

Judge Rita Hathaway, ET AL,
Defendants

ORDER OF COURT

AND NOW, this 10th day of March, 2004, based on the record made at the hearing for temporary restraining order, it is HEREBY ORDERED as follows:

1. Plaintiff's Motion for Temporary restraining Order(Document No. 2) is DENIED.
2. Defendant's Motion to Dismiss(Document No. 15) is GRANTED.
3. Plaintiff's Complaint is DISMISSED as to all Defendants.
4. The clerk is directed to mark this case CLOSED.

Dated: March 10, 2004

/s Thomas M. Hardiman
Thomas M. Hardiman
United Stated District Judge

Cc: Joseph A. Mayercheck
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Irwin, Pa. 15642

Vincent J. Grogan
Grogan Graffam
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Appendix B
24.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-1839

JOSEPH A. MAYERCHECK
Appellant

v

JUDGE RITA HATHAWAY;
BARBARA IRWIN MAYERCHECK;
VINCE ORGERA; PAUL MILLER;
RALPH CONRAD;
JUDGE RICHARD McCORMICK;
JUDGE DANIAL ACKERMAN;
PENNSYLVANIA SUPERIOR COURT;
JUDGE CHRISTOPHER FELICIANI,

Appeal from the United States District Court
For the Western district of Pennsylvania
(D.C. Civil No. 04-cv-00295)
District judge: Honorable Thomas M. Hardiman

Present: SCIRICA, Chief Judge, SLOVITER,
NYGAARD,ALITO, ROTH, MCKEE,
RENDELL,BARRY, AMBRO, FUENTES, SMITH,
FISHER, AND VAN ANTWERPEN, Circuit Judges

SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING IN BANC

Appendix C
25.

The petition for rehearing filed by pro se Appellant having been submitted to all judges who participated in the decision of the court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is hereby DENIED.

BY THE COURT:
/s/ Marjorie O. Rendell

_____
Circuit judge

Dated: February 16, 2005

CMD/cc: Joseph A. Mayercheck
Vincent J. Grogan
A. Taylor Williams

Appendix C
26.